

August 8, 2003

TO: Ms. Marlene Dortch, Secretary, Federal Communications Commission
FROM: Susan Pengilly Neitzel, Deputy SHPO and Compliance Coordinator, Idaho

RE: Docket 03-238 Nationwide Programmatic Agreement for Historic Preservation Review of Cell Tower Projects

Thank you for the opportunity to comment on the proposed Nationwide Programmatic Agreement for historic preservation review of cell tower projects. Since the beginning of FY2000, our office has reviewed approximately 400 cell tower projects in Idaho. The learning curve has been steep for the applicants and their representatives. At this point, however, most are submitting appropriate information for our review and many regularly employ cultural resource consultants. And to our relief, the number of projects has decreased dramatically in the past year. For these reasons, review of these projects seems to be going well. Therefore, we now question the need for a nationwide Programmatic Agreement, and we have serious concerns about the draft PA being proposed. Our comments are outlined below:

1. A-4. We appreciate the first WHEREAS clause on this page that reminds applicants that historic preservation professionals can “streamline the review process and minimize potential delays.” It should also be mentioned that use of professionals reduces the risk of affecting historic properties. While we appreciate the reminder, it appears that use of professionals is not mentioned again in the rest of the document, and the process is described with the applicant making decisions that should be made by professionals. The Commission may not be aware that applicants often pass the responsibility to consult with our office and prepare necessary paperwork to other people involved in the project. On more than one occasion, our primary contact has been the backhoe operator! Having a professional involved usually ensures the SHPO will be working with someone familiar with the process and the resources.
2. Page A-9, III.A.5.b-c: These exclusions should be deleted. Construction of a tower up to 400 feet within the excluded areas outlined in III.A.5.b and c could have an adverse visual effect on important and well preserved historic properties and their settings such as the Oregon Trail or the Lewis and Clark Trail. With the upcoming bicentennial of the Lewis and Clark expedition, the American public is expecting to take in the same vistas experienced by Lewis and Clark. In Idaho, there are many locations where this is still possible. With case-by-case review, our office can better ensure that towers, wind farms, and other vertically intrusive facilities are not built within the viewsheds of these important historic properties.
3. A-17 through A-24, VI and VII. Throughout these sections, the Applicant is directed to refer any disagreements between SHPO and Applicant to the Commission. The Advisory Council on Historic Preservation is notably absent from the process. There must be some mechanism for appeals directly to Advisory Council, since they are the agency that oversees the review process. In these sections, too, it should be strongly recommended that the

FCC Programmatic Agreement
Idaho SHPO Comments

applicant hire a historic preservation professional to assist in completing the Section 106 Review process.

4. A-18, VI.C. The Commission and applicants should be aware of a long-standing policy at the Idaho SHPO that only historic preservation professionals can access the state archaeological files. This is the case at many of the state offices and archaeological archives.

5. A-19, VI.C.3. This language suggests that all archaeological sites have been recorded. Please be aware, however, that only approximately 5% of the State of Idaho has been surveyed for archaeological properties, and most of this survey has taken place on Federal land. In many cases, we do not know if a project will cause direct effects to archaeological sites because we do not know if sites exist within the area of potential effects. We consider each project carefully and do not recommend an archaeological survey unless we feel one is necessary. This is demonstrated by the fact that archaeological or historical surveys have been conducted on less than half of the 400 cell tower projects we have reviewed. This paragraph also says that disagreement about the necessity for an archaeological survey may be referred to the Commission. However, the Commission lacks the local knowledge to determine whether surveys are needed.

6. A-21, Section VII.A.3. What does this paragraph mean?

7. A-25, X. In many instances in Idaho, construction of cell towers has begun before the Section 106 Review process has been completed. This section suggests this is unacceptable only if someone can demonstrate that the terms of Section 110(k) of NHPA have been violated. Demonstrating anticipatory demolition (Section 110(k)) is no easy task, however, and a historic property may not have been “significantly adversely affected” but Section 106 Review has been ignored. Therefore, the PA should clearly state that the Commission and Advisory Council will take action if an applicant has a pattern of ignoring Section 106 Review, even if a case for a Section 110 (k) violation cannot be made.

We appreciate your attention to these matters. If you have any questions, please feel free to contact me at 208-334-3847.